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No. 07-129

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

MOUSTAFA ELDICK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF

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REPLY BRIEF

In the argument of its Brief in Opposition, the United States maintains the question presented in this case is "[w]hether the petitioner has standing under 21 U.S.C. 853(n)(2) to contest the criminal forfeiture of property that represents the proceeds of another person's crimes." (Brief in Opposition at (I)). This statement signals the fundamental misconception of the Government in this case that the properties forfeited were, in fact, the proceeds of the criminal defendant Mahmoud Eldick's criminal activity. The Government's own evidence demonstrates that, by any measure, the seizures of the partnership's property exceeded the fruits of the defendant's crime. See the Petition for Rehearing in the Court of Appeals, 7-8 (citing testimony and evidence before the District Court on summary judgment, and the Government's Answer Brief below). In this case, the properties forfeited represent the proceeds of petitioner Moustafa Eldick's lawful medical practice that were entusted to his brother Mahmoud Eldick.

Nor was it ever correct, as the Government now repeats to this Court, that the criminal defendant Mahmoud owned the partnership outright, reducing petitioner Moustafa, the legitimate partner, to an unsecured creditor of his own medical practice. Again, the Government's own evidence demonstrates that defendant Mahmoud and petitioner Moustafa "were partners in the operation of the practice" and that petitioner actually generated most of the income as legitimate earnings. Pet. for Reh. 7-8, 14.

Due process requires that petitioner, who knew nothing of his brother's fraud, be afforded a hearing instead of an exercise in semantics, which so far has trumped petitioner's substantive property rights. By summary judgment motion, petitioner pleaded his claim to the legitimate assets of his

own partnership, a claim superior to any the government could conceivably claim, persisting despite the promises implied but now broken by his former partner. Though the equities were clear and straightforward, the District Court's analysis quietly divested petitioner of his status as an owner of the partnership and treated him instead as the victim of a breached contract. The Court of Appeals repeated this misunderstanding, assuming that the criminal defendant owned the partnership and treating this petitioner as simply another victim of the defendant's fraud.

At a minimum, petitioner should be afforded his right to establish by evidence in a hearing that the properties the Government has seized legitimately belong to him. Splitting hairs at summary judgment to deny petitioner even the standing to present such evidence in a case where the Government cannot justify the sweep of its seizure denies this petitioner due process of law and awards the Government a windfall. This is inconsistent with this nation's tradition of carefully scrutinizing forfeitures.

This Court should exercise its supervisory power and require that petitioner's claim to contest the forfeiture of his properties not end in a departure from the acceptable course of judicial proceedings.

Respectfully submitted,

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Dated this 11th day of December 2007